

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

Petition 2006-18

June 30, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: §§1-59, NRS 445B.210 and 445B.300.

A REGULATION relating to the control of air pollution; establishes the Nevada Clean Air Mercury Rule Program regulations requiring a mercury operating permit to construct for coal-fired electric steam generating units; and providing other matters properly relating thereto.

NOTES to LCB:

- Please make sections 2 to 23 of this regulation appear as a separate section of Chapter 445B, titled “Nevada Clean Air Mercury Rule Program.”
- This regulation is based on LCB’s 02-2006 codification of NAC 445B. LCB File Nos. R096-05 and R189-05 are integrated into the text of this petition by NDEP staff.
- A lot of the terms used in the new language sections are defined in the federal rule (70 FR28606, May 18, 2005). How do we indicate this? For example, “control period,” “Hg allowance,” “Hg Budget source” etc. are used repeatedly and are defined in 40 CFR §60.4102.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this regulation.

Sec. 2. *“CAMR operating permit to construct” means the legally binding document, or portion of such document, issued by the Director under sections 2 to 23, inclusive, of this regulation, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the source, and to the owners and operators and the Hg designated representative of the source and each such unit. As used in this subsection, the terms “HG Budget Trading Program,” “Hg Budget source,” “Hg Budget unit” and “Hg designated representative” have the meanings ascribed to them in 40 C.F.R. § 60.4102.*

Sec. 3. *“Existing Hg budget unit” means a Hg Budget unit that commenced construction or reconstruction on or before January 30, 2004.*

Sec. 4. *“Low emitting unit/Integrated gasification combined cycle allocation account,” abbreviated as “LEU/IGCC allocation account,” means a Hg allowance tracking system account for a Hg Budget unit which meets the following criteria:*

<i>Level I Hg budget unit</i>

<i>For existing Hg budget units operated on the following fuels:</i>	<i>Emission rate, based on a 12 month rolling average, not to exceed:</i>
<i>Bituminous coal</i>	<i>21×10^{-6} lb/MWh^{**}</i>
<i>Sub Bituminous coal with wet FGD[*]</i>	<i>61×10^{-6} lb/MWh^{**}</i>
<i>Sub Bituminous coal with dry FGD[*]</i>	<i>61×10^{-6} lb/MWh^{**}</i>
<i>For new Hg budget units operated on the following fuels:</i>	
<i>Bituminous coal</i>	<i>6×10^{-6} lb/MWh^{**}</i>
<i>Sub Bituminous coal with wet FGD[*]</i>	<i>20×10^{-6} lb/MWh^{**}</i>
<i>Sub Bituminous coal with dry FGD[*]</i>	<i>20×10^{-6} lb/MWh^{**}</i>
<i>IGCC (coal gasification) Technology</i>	<i>20×10^{-6} lb/MWh^{**}</i>
Level II Hg budget unit	
<i>For existing Hg budget units operated on the following fuels:</i>	<i>Emission rate, based on a 12 month rolling average, not to exceed:</i>
<i>Bituminous coal</i>	<i>24×10^{-6} lb/MWh^{**}</i>
<i>Sub Bituminous coal with wet FGD[*]</i>	<i>66×10^{-6} lb/MWh^{**}</i>
<i>Sub Bituminous coal with dry FGD[*]</i>	<i>97×10^{-6} lb/MWh^{**}</i>
<i>For new Hg budget units operated on the following fuels:</i>	
<i>Bituminous coal</i>	<i>16×10^{-6} lb/MWh^{**}</i>
<i>Sub Bituminous coal with wet FGD[*]</i>	<i>53×10^{-6} lb/MWh^{**}</i>
<i>Sub Bituminous coal with dry FGD[*]</i>	<i>78×10^{-6} lb/MWh^{**}</i>

^{*} FGD stands for flue gas desulfurization.

^{**} MWh stands for megawatt hours.

Sec. 5. “Mercury baseline emission period” means a consecutive 36 month period of operation of a new Hg budget unit determined from measured emissions from the new Hg Budget unit.

Sec. 6. “Nevada Clean Air Mercury Rule Program,” abbreviated as “Nevada CAMR Program” means the state program developed for compliance with the federal Clean Air Mercury Rule as set forth in Volume 70 of the Federal Register at pages 28605 et seq., May 18, 2005.

Sec. 7. “New Hg budget unit” means a Hg Budget unit that commenced construction or reconstruction after January 30, 2004.

Sec. 8. *“New source allocation account” means a Hg allowance tracking system account for a Hg Budget unit that has not established a mercury baseline emission period.*

Sec. 9. *“Special allocation account” means a Hg allowance tracking system account in which Hg budget allowances that are not otherwise allocated are recorded for a control period.*

Sec. 10. *An owner or operator of a stationary source that has a new or existing Hg budget unit shall:*

- 1. Submit an application for a CAMR operating permit to construct for the Hg Budget unit on a form provided by the Director at least 18 months before January 1, 2010 or the date on which the Hg Budget unit commences operation, whichever occurs later, and*
- 2. Obtain a CAMR operating permit to construct for the Hg Budget unit.*

Sec. 11. *An application for a CAMR operating permit to construct or for a revision of a CAMR operating permit to construct must include:*

- 1. Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and his agent, and the name and telephone number of the manager of the plant or another appropriate person to contact;*
- 2. An identification of each Hg Budget unit;*
- 3. The location of any records that the applicant must keep pursuant to the requirements of the CAMR operating permit to construct, if the records are kept at a location other than the emitting stationary source;*
- 4. A mercury monitoring plan, the content of which is consistent with the appropriate provisions of 40 C.F.R. Part 60 and Part 75; and*
- 5. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.*

Sec. 12. *1. For an application for a CAMR operating permit to construct or an application for the revision of a CAMR operating permit to construct, within 30 days after the date of receipt of the application, the Director shall determine whether the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Director shall determine the application to be complete. The official date of submittal of the application shall be deemed to be the date on which the Director determines that the application is complete or the 31st day after the date of receipt, whichever occurs earlier.*

2. If, after the official date of submittal of an application pursuant to subsection 1, the Director discovers that additional information is required to act on an application, the Director may request additional information necessary to determine whether the proposed construction or operation will comply with all of the requirements set forth in sections 2 to 23, inclusive, of this regulation. The applicant must provide in writing any additional information that the Director requests within the time specified in the request of the Director. Any delay in

the submittal of the requested information will result in a corresponding delay in the action of the Director on the application submitted to the Director.

3. Within 12 months after the official date of submittal of an application for a CAMR operating permit to construct or the revision of a CAMR operating permit to construct, the Director shall issue or deny the CAMR operating permit to construct or the proposed revision of a CAMR operating permit to construct.

Sec. 13. For each Hg Budget unit:

1. The Director shall cite the legal authority for each condition contained in a CAMR operating permit to construct.

2. A CAMR operating permit to construct must contain the following conditions:

(a) Each of the conditions and requirements of the CAMR operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.

(b) The holder of the CAMR operating permit to construct must comply with all conditions of the CAMR operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the CAMR operating permit to construct by the Director; or

(3) The reopening or revising of the CAMR operating permit to construct by the holder of the CAMR operating permit to construct as directed by the Director.

(c) The need to halt or reduce activity to maintain compliance with the conditions of the CAMR operating permit to construct is not a defense to noncompliance with any condition of the CAMR operating permit to construct.

(d) The Director may revise, revoke and reissue, reopen and revise, or terminate the CAMR operating permit to construct for cause.

(e) The CAMR operating permit to construct does not convey any property rights or any exclusive privilege.

(f) The holder of the CAMR operating permit to construct shall provide the Director, in writing and within a reasonable time, with any information that the Director requests to determine whether cause exists for revoking or terminating the CAMR operating permit to construct, or to determine compliance with the conditions of the CAMR operating permit to construct.

(g) The holder of the CAMR operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the CAMR operating permit to construct where:

(I) The Hg budget unit is located;

(III) Activity related to the Hg budget unit is conducted; or

(III) Records are kept pursuant to the conditions of the CAMR operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the CAMR operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the CAMR operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the CAMR operating permit to construct or applicable requirements.

(h) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the CAMR operating permit to construct are true, accurate and complete.

(i) The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of 40 C.F.R. §§60.4170 through 60.4176. The emissions measurements recorded and reported in accordance with 40 C.F.R. §§60.4170 through 60.4176 shall be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under paragraph (j).

(j) (1) As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source shall hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period under 40 C.F.R. §60.4154(b) in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in accordance with 40 C.F.R. §§60.4170 through 60.4176.

(2) A Hg Budget unit shall be subject to the requirements of subparagraph (1) starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under 40 C.F.R. §60.4170(b)(1) or (2).

(3) A Hg allowance shall not be deducted for compliance with the requirements under subparagraph (1) for a control period in a calendar year before the year for which the Hg allowance was allocated.

(4) Hg allowances shall be held in, deducted from or transferred into or among Hg Allowance Tracking System accounts in accordance with 40 C.F.R. §§60.4160 through 60.4162.

(5) A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the CAMR operating permit to construct application, the CAMR operating permit to construct, or an exemption under 40 C.F.R. §60.4105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) Upon recordation by the Administrator under 40 C.F.R. §§60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget unit's compliance account is incorporated automatically in any CAMR operating permit to construct of the source that includes the Hg Budget unit.

(k) A CAMR operating permit to construct must contain the following excess emissions requirements:

(1) If a Hg Budget source emits mercury during any control period in excess of the Hg Budget emissions limitation, then:

(I) The owners and operators of the source and each Hg Budget unit at the source

shall surrender the Hg allowances required for deduction under 40 C.F.R. §60.4154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Act or applicable State law; and

(II) Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of 40 C.F.R. Part 60 Subpart HHHH, the Act and applicable State law.

(l) A CAMR operating permit to construct must contain the following recordkeeping and reporting requirements:

(1) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(I) The certificate of representation under 40 C.F.R. §60.4113 for the Hg designated representative for the source and each Hg Budget unit at the source and documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under 40 C.F.R. §60.4113 changing the Hg designated representative.

(II) All emissions monitoring information, in accordance with 40 C.F.R. §§60.4170 through 60.4176, provided that to the extent that 40 C.F.R. §§60.4170 through 60.4176 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(III) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

(IV) Copies of all documents used to complete a CAMR operating permit to construct application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

(2) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source shall submit the reports required under the Hg Budget Trading Program, including those under 40 C.F.R. §§60.4170 through 60.4176.

(m) A CAMR operating permit to construct must contain the following requirements regarding liability:

(1) Each Hg Budget source and each Hg Budget unit at the source shall meet the requirements of the Hg Budget Trading Program.

(2) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source shall also apply to the owners and operators of such source and of the Hg Budget units at the source.

(3) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit shall also apply to the owners and operators of such unit.

(n) A CAMR operating permit to construct must contain the following requirements regarding effects on other authorities. No provision of the Hg Budget Trading Program, a CAMR operating permit to construct application, a CAMR operating permit to construct, or an exemption under 40 C.F.R. §60.4105 shall be construed as exempting or excluding the owners and operators and the Hg designated representative of a Hg Budget source or Hg Budget unit at the source from compliance with any other provision of the applicable state

implementation plan, a Federally enforceable permit, or the Act.

(o) The owner or operator of the Hg Budget unit shall comply with the mercury monitoring plan, the submittal of which is required in subsection 4 of section 11 of this regulation.

(p) Any other requirements deemed necessary by the Director.

Sec. 14. *For a new Hg Budget unit or a modified Hg Budget unit:*

1. If construction will occur in one phase, a CAMR operating permit to construct for a new or modified Hg Budget unit expires if construction is not commenced within 18 months after the date of issuance thereof or if construction of the Hg Budget unit is delayed for 18 months after initiated. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

2. If construction will occur in more than one phase, the projected date of the commencement of construction of each phase of construction must be approved by the Director. A CAMR operating permit to construct expires if the initial phase of construction is not commenced within 18 months after the projected date of the commencement of construction approved by the Director. The Director may extend only the date on which the initial phase of construction may be commenced upon a showing that the extension is justified.

Sec. 15. *The Nevada trading budget for annual allocations of Hg allowances for the control periods in 2010 through 2017 is 0.285 tons (9120 ounces/allowances) per control period, and for 2018 and thereafter, 0.112 tons (3585 ounces/allowances) per control period. The Director shall not allocate Hg allowances in excess of the Nevada trading budget accounts.*

Sec. 16. *The Director will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with section 17 of this regulation, for:*

- 1. The control periods in 2010, 2011, and 2012, by November 17, 2006;*
- 2. The control period in 2013, and each year thereafter, by October 31, 2009, and October 31 of each year thereafter, for each Hg Budget unit that has established a mercury emissions baseline period.*

Sec. 17. *1. For the control periods 2010, 2011, and 2012, the Hg allowance allocation for each Hg budget unit that commenced operation before January 1, 2001, shall be determined by the Director and based on the following:*

- (a) Hg emissions factor determined from testing performed at the Hg Budget source;*
- (b) The highest calendar year of gross megawatts output achieved by each Hg Budget unit for the period 2003 through 2005, and*
- (c) The corresponding capacity factor for the year determined from paragraph (b), as reported to the Nevada Public Utilities Commission.*

2. For the control period in 2013, and each year thereafter, the Hg allowance allocation for each Hg Budget unit that commenced operation before January 1, 2001, and any other Hg Budget unit that has established a mercury emission baseline period shall be determined by the Director and based on the following:

- (a) Actual mercury emissions data measured and as reported for each Hg Budget unit from calendar year 2009, and each year thereafter; and*
 - (b) Each Hg Budget unit's capacity factors as contained in the resource plan approved by the Nevada Public Utilities Commission; or*
 - (c) An 80 percent capacity factor for Hg Budget units not regulated by the Nevada Public Utilities Commission.*
- 3. If necessary, the allocation will be prorated with other Hg Budget units that have established a mercury baseline emission period using the average of the total gross megawatts for the preceding 36 month period of operation.*
- 4. The Director shall not allocate Hg allowances to any Hg Budget source or Hg Budget unit that is permanently retired and that is exempted under 40 C.F.R. §60.4105(a), or has otherwise allowed its operating permit to expire.*

Sec. 18. *The Director shall establish the following Hg allowance tracking system accounts and notify the Administrator of the allocation distribution for each control period as follows:*

- 1. New source allocation account:*
 - (a) For each control period from 2010 to 2017, inclusive, 800 Hg allowances;*
 - (b) For each control period beginning with 2018 and each year thereafter, 112 Hg allowances.*
- 2. LEU/IGCC allocation account:*
 - (a) For each control period from 2010 to 2017, inclusive, 3,200 Hg allowances;*
 - (b) For each control period beginning with 2018 and each year thereafter, 115 Hg allowances.*
- 3. Special allocation account, for control period 2010 and each year thereafter, all allowances not otherwise allocated pursuant to subsections 1 and 2 and section 17 of this regulation.*

Sec. 19. *1. Except as otherwise provided for in subsection 4, on or before 15 business days prior to June 1, 2011, and each year thereafter, for each Hg Budget source that has been provided allocations in excess of the total actual emissions for all Hg Budget units at the Hg Budget source for the preceding control period, the Hg designated representative shall submit a request to the Administrator to transfer from the Hg Budget source's compliance account to the LEU/IGCC allocation account the amount of Hg allowances that exceeds actual Hg emissions from all Hg Budget units at the source.*

2. On or before 5 business days prior to February 28, 2011, and each year thereafter, for each Hg Budget source that has been allocated Hg allowances in an amount less than that of the total actual emissions for all Hg Budget units at the Hg Budget source for the preceding control period, the Director shall submit a request to the Administrator to transfer from the special allocation account to the Hg Budget source's compliance account the amount of Hg allowances necessary to balance the Hg Budget source's actual Hg emissions for the control period. If the amount of Hg allowances in the special allocation account is less than the balance necessary to equal the actual Hg emissions from all of the Hg budget sources for the control period, then the Director shall prorate Hg allowances using the average of the total gross megawatts from all eligible Hg Budget units for the control period.

3. *The Director shall not allocate Hg allowances to any Hg Budget unit to cover allowances needed by the Hg Budget source pursuant to 40 C.F.R. §60.4154 (d), “Deductions for excess emissions.”*

4. *A Hg Budget source may retain allocations in excess of the total actual emissions that result from the voluntary installation and operation of pollution control equipment or enhancement of operation of process equipment which results in mercury emissions reductions. Hg allowances shall be allocated only for the control period in which the pollution control equipment began operating or an enhancement to the process equipment occurred. The retention of Hg allowances will not be allowed for pollution control projects resulting from a settlement for noncompliance with any local, state or federal regulatory proceeding.*

Sec. 20. *The Director shall manage the new source allocation account as follows:*

1. *The Hg designated representative of a Hg Budget source shall submit, in a format specified by the Director, a request to the Director for Hg allowance allocations starting with control period 2010 or the control period in which a new Hg Budget unit commences commercial operation, whichever occurs later, until the first control period after the Hg Budget source has established a Hg baseline emission period for which the unit is allocated Hg allowances under section 19 of this regulation. The Hg allowance allocation request must be based on an 80 percent capacity factor. The Hg allowance allocation request must be submitted on or before July 1 of the first control period for which the Hg allowances are requested and after the date on which the Hg Budget unit commences commercial operation.*

2. *The Director will review each Hg allowance allocation requested under subsection 1 as follows:*

(a) *The Director will accept an allowance allocation request only if the request meets, or is adjusted by the Director as necessary to meet, the requirements of subsection 1.*

(b) *The Director will determine the sum of the Hg allowances requested in all allowance allocation requests accepted under paragraph (a) for the control period. If the number of Hg allowances in the new source allocation account is:*

(1) *Equal to or greater than the sum of Hg allowances requested, the Director will allocate to the Hg Budget source a number of Hg allowances equal to the number requested.*

(2) *Less than the sum of all Hg allowances requested, the Director will allocate Hg allowances to the Hg Budget source on a prorated basis, using the average of the total gross megawatts from all eligible Hg Budget units for the preceding control period.*

(c) *The Director will notify each Hg designated representative of a Hg Budget source that submitted an allowance allocation request of the amount of Hg allowances allocated for the control period to the Hg Budget source for each new Hg Budget unit covered by the request.*

3. *On or before 15 business days prior to June 1, 2011, and each year thereafter, for each Hg Budget source that has been provided allocations in excess of the total actual emissions for all new Hg Budget units at the Hg Budget source for the preceding control period, the Hg designated representative shall submit a request to the Administrator to transfer from the Hg Budget source’s compliance account to the LEU/IGCC allocation account the amount of allocations that exceeds actual Hg emissions from all new Hg Budget units at the source.*

4. *On or before 5 business days prior to February 28, 2011, and each year thereafter, for each Hg Budget source that has been provided allocations in an amount less than that of the total actual emissions for all new Hg Budget units at the Hg Budget source for the preceding*

control period, the Director shall submit a request to the Administrator to transfer from the special allocation account to the Hg Budget source's compliance account the amount of allocations necessary to balance the Hg Budget source's actual Hg emissions for the control period.

5. On or before October 31, 2010 and each year thereafter, the Director shall submit a request to the Administrator to transfer the number of Hg allowances as determined in paragraph (b) of subsection 2 from the new source allocation account to the compliance account of each Hg Budget source.

6. The Director shall not allocate Hg allowances to any Hg Budget unit to cover allowances needed by the Hg Budget source pursuant to 40 C.F.R. §60.4154 (d), "Deductions for excess emissions."

7. Hg allowances not transferred under subsection 5 shall accrue for the control periods 2010 through 2017. On or before February 1, 2018, the Director shall submit a request to the Administrator to transfer all remaining unallocated allowances for the control periods 2010 through 2017 to the LEU/IGCC allocation account.

8. For control period 2018, and each year thereafter, Hg allowances not transferred under subsection 5 shall accrue in the new source allocation account until allocated under subsection 2.

Sec. 21. *The Director shall manage the LEU/IGCC allocation account as follows:*

1. The Hg designated representative of a Hg budget unit qualifying as a level I or level II Hg emission unit may submit, in a format specified by the Director, an application to the Director requesting Hg allowances from the LEU/IGCC allocation account for each qualifying Hg Budget unit, on or before February 1 of the calendar year following the applicable control period.

(a) The Director will accept a LEU/IGCC allocation account allocation request only if the request meets the level I and II criteria requirements of section 4 of this regulation.

(b) On or before March 1 of the year following the applicable control period, the Director shall submit a request to the Administrator to transfer Hg allowances for the previous control period as determined in subsections 2 and 3. Verification of emission rates through CAMR certified monitoring systems and relevant plant records as set forth in the mercury monitoring plan pursuant to subsection 4 of section 11 of this regulation will be required.

2. Hg Budget units qualifying as level I units will be provided first priority for distribution of allowances from the LEU/IGCC allocation account. Hg allowance distribution will be based on the qualifying level I unit's actual Hg emissions for the prior control period. If sufficient Hg allowances are not available in the LEU/IGCC allocation account to cover all level I allocation requests, the Director shall prorate Hg allowances using the average of the total gross megawatts for the preceding control period for all qualifying level I units. In no case will Hg allowance distributions exceed the qualifying level I Hg emission unit's actual emissions.

3. Hg Budget units qualifying as level II units become eligible for any remaining unallocated allowances in the LEU/IGCC allocation account after the level I distribution provided in subsection 2. Hg allowance distribution will be based on the qualifying level II unit's actual Hg emissions for the prior control period. If sufficient Hg allowances are not available in the LEU/IGCC allocation account to cover all level II allocation requests, the Director shall prorate Hg allowances using the average of the total gross megawatts for the

preceding control period for all qualifying level II units. In no case will Hg allowance distributions exceed the qualifying level II Hg emission unit's actual emissions.

4. Any unallocated allowances remaining in the LEU/IGCC allocation account after level I and level II allocation distribution will be retained for the next control period.

5. The LEU/IGCC allocation account emission rates, as established in section 4, shall be re-evaluated by the Director to determine if the emission rates established are appropriate levels for the LEU/IGCC allocation account. The re-evaluation will be conducted following the 2010-2012 control periods, and every three years thereafter.

↪ If the owner or operator of an existing Hg budget unit installs pollution control equipment which results in mercury emissions reductions, pursuant to an action for noncompliance with any local, state or federal requirement, that Hg budget unit shall not qualify as a level I or II Hg budget unit.

Sec. 22. *The Director shall manage mercury allowances in the special allocation account in the following order of priority:*

1. Allocate mercury allowances in accordance with the provisions established in sections 17, 19, 20 and 21 of this regulation.

2. Mercury allowances may be auctioned or offered for sale, with the proceeds being deposited in the State General Fund for credit to the Account for the Management of Air Quality.

3. Mercury allowances may be banked for future use or permanently retired.

Sec. 23. *1. The fee for a new or revised CAMR operating permit to construct as required pursuant to sections 2 to 23, inclusive, of this regulation is \$2,000. An applicant must pay the entire fee when he submits the application to the Director.*

2. The owner or operator of a Hg budget source must submit an annual maintenance fee for each Hg Budget unit. The annual maintenance fee shall be determined as follows:

(a) For the fiscal year ending on June 30, 2008, the fee for each Hg Budget unit must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 300,000 by the total number of Hg Budget units. The Director shall determine the total number of Hg Budget units to be charged pursuant to this paragraph on or before May 1, 2007.

(b) For each fiscal year after the fiscal year ending on June 30, 2008, the fee for each Hg Budget unit must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 250,000 by the total number of Hg Budget units which have previously obtained a mercury operating permit to construct. The Director shall determine the total number of Hg Budget units to be charged pursuant to this paragraph each year on or before May 1 of the immediately preceding fiscal year.

3. The State Department of Conservation and Natural Resources shall collect all fees required pursuant to this section not later than July 1 of each year.

4. Except as otherwise provided in this subsection, the owner or operator of a source who does not pay his annual fee installments within 30 days after the date on which payment becomes due will be assessed a late penalty in the amount of 25 percent of the amount of the fees due. The late penalty must be paid in addition to the annual fees. The late penalty set forth in this subsection does not apply if, at the time that the late fee would otherwise be

assessed, the owner or operator is in negotiations with the Director concerning his annual fees.

Sec. 24. NAC 445B.123 is hereby amended to read as follows:

NAC 445B.123 “Operating permit” has the meaning ascribed to it in NRS 445B.145. Unless otherwise specifically stated, the term includes:

1. A Class I, a Class II and a Class III operating permit;
2. An operating permit to construct; ~~and~~
3. A mercury operating permit to construct, as defined in NAC 445B.3625~~[-]~~ ; *and*
4. *A CAMR operating permit to construct.*

Sec. 25. NAC 445B.156 is hereby amended to read as follows:

NAC 445B.156 “Responsible official” means:

1. For a corporation:
 - (a) A president;
 - (b) A vice president in charge of a principal business function;
 - (c) A secretary;
 - (d) A treasurer; or
 - (e) An authorized representative of such a person who is responsible for the overall operation of the facility and who is designated in writing by an officer of the corporation and approved in advance by the Director.
2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
3. For a municipality or a state, federal or other public agency, a ranking elected official or a principal executive officer, including, for a federal agency, a chief executive officer who has responsibility for the overall operations of a principal geographic unit of the agency.
4. For an affected source, the designated representative or his alternate, as defined in 42 U.S.C. § 7651a(26).

5. For a Hg Budget source, the Hg designated representative or his alternate, as defined in Title 40 CFR Part 60.4102.

Sec. 26. NAC 445B.221 is hereby amended to read as follows:

NAC 445B.221 1. Title 40 C.F.R. §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165, and Appendix S of Title 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2002.

2. Appendix W of Title 40 C.F.R. Part 51 is hereby adopted by reference as it existed on July 1, 2005, and the amendments to Appendix W of Title 40 C.F.R. Part 51 as set forth in Volume 70 of the Federal Register at pages 68218 et seq., November 9, 2005, are hereby adopted by reference.

3. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, 2003.

4. ~~[Except as otherwise provided in subsection 5, the]~~ *The* following subparts of Title 40 C.F.R. Part 60 are hereby adopted by reference:

(a) Subpart A, except §§ 60.4, 60.8(b)(2), 60.8(b)(3) and 60.11(e) , as it existed on July 1, ~~[2005]~~ *2006*;

(b) *Subpart B § 60.21 as it existed on July 1, 2006.*

(c) Subparts C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK,

LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW ~~[and]~~, AAAA, CCCC, DDDD, EEEE and FFFF as they existed on July 1, ~~[2005]~~ 2006; and

~~[(e)]~~ (d) Subpart~~[s-CCCC and DDDD]~~ HHHH, except §§ 60.4105(b)(2), 60.4153 (a) and (b), and 60.4176, as set forth in Volume 70 of the Federal Register at pages ~~[55568]~~ 28605 et seq., ~~[September 22,]~~ May 18, 2005~~[, are hereby adopted by reference]~~ and the amendments to Subpart HHHH as set forth in Volume 71 of the Federal Register at pages 33400 et seq., June 9, 2006..

5. ~~The amendments to subpart Da of Title 40 C.F.R. Part 60 set forth in Volume 70 of the Federal Register at pages 51266 et seq., August 30, 2005, are hereby adopted by reference.] Appendix B of Title 40 C.F.R. Part 60 is hereby adopted by reference as it existed on July 1, 2006.~~

6. Subparts A, C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of Title 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, ~~[2003]~~ 2006.

7. Except as otherwise provided in subsection 8, the following subparts of Title 40 C.F.R. Part 63 are hereby adopted by reference:

(a) Subparts A, B, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, EEEE, GGGG, HHHH, JJJJ, KKKK, MMMM, NNNN, OOOO, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCCC, DDDDD, EEEEE, FFFFF, JJJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ and SSSSS, as they existed on July 1, ~~[2005]~~ 2006 ; and

(b) Subpart FFFF as set forth in Volume 70 of the Federal Register at pages 38553 et seq., July 1, 2005 and pages 51269 et seq., August 30, 2005.

8. The amendments to:

(a) Subpart B of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 39662 et seq., July 11, 2005;

(b) Subpart LL of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 66280 et seq., November 2, 2005;

(c) Subpart EEE of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 59401 et seq., October 12, 2005;

(d) Subpart QQQ of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 40672 et seq., July 14, 2005;

(e) Subpart RRR of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 57513 et seq., October 3, 2005;

(f) Subpart UUUU of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 46683 et seq., August 10, 2005;

(g) Subpart WWWW of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 50117 et seq., August 25, 2005;

(h) Subpart CCCCC of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 44285 et seq., August 2, 2005;

↪ are hereby adopted by reference.

9. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, ~~[2003]~~ 2006. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, the provisions of 40 C.F.R. Part 72 apply.

10. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, [2003] 2006. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, the provisions of 40 C.F.R. Part 76 apply.

11. Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, and the amendments to section 7412 contained in 40 C.F.R. Part 63, Subpart C, are hereby adopted by reference as they existed on July 1, 2003.

12. The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Internet at the following website:

<http://www.osha.gov/pls/imis/sic_manual.html>.

13. A copy of the publications which contain these provisions may be obtained from the:

(a) Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954.

The price is:

(1) For the volume containing §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165 and Appendices S and W of Part 51.....	\$45
(2) For § 52.21.....	61
(3) For Part 60 (Sections 60.1 to end).....	58
(4) For Part 60 (Appendices).....	57
(5) For Parts 61 - 62.....	45
(6) For Part 63 (Sections 63.1 to 63.599).....	58
(7) For Part 63 (Sections 63.600 to 63.1199).....	50
(8) For Part 63 (Sections 63.1200 to 63.1439).....	50
(9) For Part 63 (Sections 63.1440 to 63.6175).....	32
(10) For Part 63 (Sections 63.6580 to 63.8830).....	32
(11) For Part 63 (Sections 63.8980 to end).....	35
(12) For the volume containing Parts 72 and 76.....	62

(b) Division of State Library and Archives of the Department of Cultural Affairs for 10 cents per page.

(c) Internet at the following website: <<http://www.gpoaccess.gov/nara/index.html>>.

14. For the purposes of the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

15. Except as otherwise provided in subsections 9 and 10, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3689, inclusive, for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

16. For the purposes of this section, “administrator” as used in the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section means the Director.

Sec. 27. NAC 445B.287 is hereby amended to read as follows:

NAC 445B.287 1. Except as otherwise provided in subsection 2 and in NAC 445B.288, an operating permit, operating permit to construct [or], permit to construct *or a CAMR operating permit to construct* is required for each stationary source and:

(a) If a stationary source is a Class I source:

(1) A revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3425, 445B.344 or 445B.3441 before the stationary source may be modified; or

(2) A revision of the operating permit to construct is required pursuant to the requirements of paragraph (a) of subsection 1 of NAC 445B.3361 before the stationary source may be modified,

↪ as appropriate.

(b) If a stationary source is a Class II source, a revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3465 before the stationary source may be modified.

(c) If a stationary source is a Class III source, a revision of the operating permit is required pursuant to the requirements of NAC 445B.3493 before the stationary source may be modified.

(d) If a stationary source maintains one or more thermal units that emit mercury, the owner or operator of a thermal unit that emits mercury shall comply with the provisions set forth in NAC 445B.3611 to 445B.3689, inclusive.

(e) If a stationary source maintains one or more Hg Budget units, the owner or operator of a Hg budget unit shall comply with the provisions set forth in sections 2 to 23, inclusive, of this regulation.

2. A Class I source is not subject to the provisions of subparagraph (1) of paragraph (a) of subsection 1 if the source is not a major source, an affected source or a solid waste incineration unit required to obtain a permit pursuant to 42 U.S.C. § 7429(e). For a Class I source which is not a major source and which subsequently becomes subject to a standard or other requirement under 42 U.S.C. § 7411 or 7412, the Administrator will determine whether to exempt the source from the requirement to obtain a Class I operating permit at the time that the new standard is adopted.

3. An operating permit, operating permit to construct ~~[or]~~, permit to construct *or CAMR operating permit to construct* may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment reflecting a change of ownership or the name of the stationary source for the effective time remaining on the original operating permit pursuant to NAC 445B.319.

4. As used in this section:

(a) "Permit to construct" means a document issued and signed by the Director before November 1, 1995, certifying that:

(1) Adequate empirical data for a stationary source has been received and constitutes approval of location; or

(2) All portions of NAC 445B.305 to 445B.314, inclusive, and 445B.3395, and any other provisions of NAC 445B.001 to 445B.3689, inclusive, have been complied with and constitute approval of location and for construction.

(b) "Thermal unit that emits mercury" has the meaning ascribed to it in NAC 445B.3643.

Sec. 28. NAC 445B.325 is hereby amended to read as follows:

NAC 445B.325 1. ~~[A]~~ *Except as provided in subsection 2, a* Class I operating permit must be reopened and revised to incorporate any additional applicable requirement adopted pursuant to the Act if, on the effective date of the applicable requirement, the operating permit has a remaining term of 3 or more years. The reopening must be completed no later than 18 months after the effective date of the applicable requirement.

2. *A Class I operating permit is not required to be reopened for a Hg Budget unit. The owner or operator of a Hg budget unit shall comply with the provisions set forth in sections 2 to 23, inclusive, of this regulation.*

3. An operating permit may be terminated, reopened and revised, revised, or revoked and reissued if:

(a) The Director or the Administrator determines that the operating permit contains a material mistake or is based on inaccurate statements;

(b) The Director or the Administrator determines that the operating permit, as written, does not ensure compliance with all applicable requirements; or

(c) The Director determines that there has been a violation of any of the provisions of NAC 445B.001 to 445B.3497, inclusive, any applicable requirement, or any condition contained in the operating permit.

[3] 4. The Director shall notify the holder of the operating permit at least 30 days before he terminates, reopens and revises, revises, or revokes and reissues the operating permit. The notice must be made by certified mail and must contain the legal authority, the jurisdiction and the reasons for the action taken.

[4] 5. If the Administrator notifies the Director and the holder of the operating permit that cause exists to reopen the operating permit, the Director shall forward to the Administrator a proposed determination of the reopening and revision, the revision of, or the revocation and reissuance of the operating permit within 90 days after receipt of the notice from the Administrator.

[5] 6. If the Director reopens an operating permit, he shall revise only those portions of the operating permit for which cause exists.

[6] 7. The reopening of an operating permit pursuant to this section must comply with all of the relevant requirements for the issuance or revision of a permit, including the requirements related to the content of the permit and the requirements for notice, public participation and comment, and a review by any affected states.

Sec. 29. NAC 445B.3361 is hereby amended to read as follows:

NAC 445B.3361 1. To establish a new Class I stationary source or modify an existing Class I stationary source, the owner or operator of a proposed new Class I stationary source or the existing Class I stationary source must:

(a) Apply for and obtain a new or revised:

(1) Operating permit to construct pursuant to NAC 445B.001 to 445B.3689, inclusive; or

(2) Class I operating permit pursuant to NAC 445B.001 to 445B.3689; **[and]**

(b) If the owner or operator of the Class I stationary source operates a thermal unit that emits mercury, apply for and obtain a new or revised mercury operating permit to construct for the thermal unit that emits mercury and comply with the provisions set forth in NAC 445B.3611 to 445B.3689, inclusive~~[-]; and~~

(c) If the owner or operator of the Class I stationary source operates a Hg budget unit, apply for and obtain a new or revised CAMR operating permit to construct and comply with the provisions set forth in sections 2 to 23, inclusive, of this regulation.

2. To obtain a designation for an emission unit as a clean unit, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the designation of a clean unit pursuant to NAC 445B.001 to 445B.3689, inclusive.

3. To obtain the approval of a pollution control project as specified in 40 C.F.R. § 52.21(z)(1), the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of a pollution control project pursuant to

NAC 445B.001 to 445B.3689, inclusive, before the owner or operator begins actual construction of the pollution control project.

4. To establish a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of the plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3689, inclusive. To revise or renew a Class I operating permit to construct for the approval of a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a revised or renewed Class I operating permit to construct for the approval of a plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3689, inclusive.

5. Except as otherwise provided in subsection 7, if an owner or operator obtains an operating permit to construct, the owner or operator is not required to obtain an operating permit or revised operating permit before commencing initial construction, start-up and operation of the proposed new Class I stationary source or the modification to the existing Class I stationary source.

6. Except as otherwise provided in this subsection and subsections 7 and 8, if an owner or operator has a valid operating permit to construct, the owner or operator may continue to operate a new Class I stationary source or modifications to an existing Class I stationary source under that operating permit to construct if the owner or operator submits a complete application for a Class I operating permit within 12 months after the date of initial start-up of the new Class I stationary source or modifications to the existing Class I stationary source. The provisions of this subsection do not apply to:

(a) A Class I operating permit to construct for the designation of a clean unit. A Class I operating permit to construct for the designation of a clean unit must be incorporated into the Class I operating permit pursuant to 40 C.F.R. § 52.21(y)(8).

(b) A Class I operating permit for the approval of a pollution control project.

(c) A Class I operating permit to construct for the approval of a plantwide applicability limitation.

7. If the conditions of an existing Class I operating permit would prohibit the construction or change in operation of the existing Class I stationary source and the owner or operator is not seeking to revise the Class I operating permit at the Class I stationary source pursuant to *subparagraph (2) of paragraph ~~(b)~~ (a)* of subsection 1, the owner or operator must concurrently:

(a) For the construction or change in operation of the existing Class I stationary source:

(1) Obtain a Class I operating permit to construct; or

(2) If the construction or change in operation involves mercury emissions from a thermal unit that emits mercury, obtain a mercury operating permit to construct pursuant to NAC 445B.3611 to 445B.3689, inclusive; and

(b) Obtain an administrative revision to an operating permit to incorporate the conditions of the Class I operating permit to construct into the existing Class I operating permit pursuant to NAC 445B.3441 before commencing with the construction or change in operation of the existing Class I stationary source.

8. If an owner or operator has a valid :

(a) ~~mercury~~ Mercury operating permit to construct, the owner or operator may continue to operate the thermal unit that emits mercury which is located at an existing Class I stationary source if the owner or operator submits a complete application to revise the existing Class I operating permit within 12 months after the determination of the NvMACT contained in the mercury operating permit to construct by the Director.

(b) CAMR operating permit to construct, the owner or operator may continue to operate the Hg Budget unit located at an existing Class I stationary source:

(1) If the owner or operator of an existing Hg Budget unit submits a complete application to revise the existing Class I operating permit by January 1, 2010, or

(2) If the owner or operator of a new Hg Budget unit, submits a complete application at the time they are required to file the initial Class I operating permit application.

9. As used in this section:

- (a) “Mercury emissions” has the meaning ascribed to it in NAC 445B.3623.
- (b) “Mercury operating permit to construct” has the meaning ascribed to it in NAC 445B.3625.
- (c) “NvMACT” has the meaning ascribed to it in NAC 445B.3629.
- (d) “Thermal unit that emits mercury” has the meaning ascribed to it in NAC 445B.3643.

Sec. 30. NAC 445B.3375 is hereby amended to read as follows:

NAC 445B.3375 1. Except as otherwise provided in subsections 7 and 8 of NAC 445B.3361, an owner or operator of a stationary source must file a Class I-B application, on a form provided by the Director, and obtain a Class I operating permit before commencing the construction, reconstruction or modification of:

- (a) A Class I existing stationary source;
- (b) A proposed modification for which a revision of an operating permit is requested pursuant to NAC 445B.3425 or 445B.344 to a Class I stationary source;
- (c) A modification to a Class II source that results in total emissions of any regulated air pollutant above the thresholds defined in NAC 445B.094 for a major source;
- (d) A proposed new Class I stationary source;
- (e) A proposed new Class I stationary source subject to a standard, a limitation or any other requirement adopted pursuant to 42 U.S.C. § 7411 or 7412, unless the Class I stationary source is subject only to the requirements of 42 U.S.C. § 7412(r); or
- (f) A proposed new stationary source which is included in a category of sources designated by the Administrator pursuant to 42 U.S.C. § 7661a(a).

2. If a new stationary source becomes subject to the requirements of a Class I stationary source, the owner or operator of the new stationary source must submit a Class I-B application to the Director within 12 months after the date on which the new stationary source becomes subject to the requirements for Class I sources.

3. An affected source that is not a major source and is not otherwise subject to the requirements of paragraph (f) of subsection 1 may apply for a Class II operating permit. If an affected source obtains a Class II operating permit pursuant to this subsection, the affected source must file with the Director:

- (a) A completed application for an acid rain permit before the source commences operation; and
- (b) A Class I-B application within 12 months after the date on which the Class II operating permit was issued to the affected source.